

United States District Court

DISTRICT OF DELAWARE

UNITED STATES OF AMERICA

v.

MARIO FRANCISCO MARTINEZ-HERNANDEZ

Criminal Complaint

CASE NUMBER: 08-149M

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief.

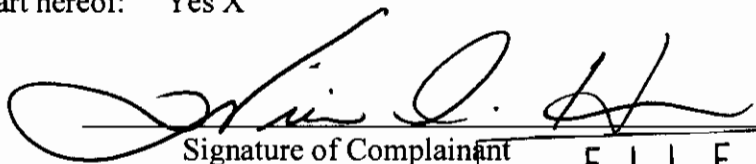
On or about August 19, 2008 in Sussex County, in the District of Delaware, defendant Mario Francisco Martinez-Hernandez, an alien, was found in the United States, after previously being removed to Guatemala, and prior to his reembarkation at a place outside the United States neither the United States Attorney General nor the Undersecretary for Border and Transportation Security of the Department of Homeland Security had expressly consented to defendant's reapplying for admission to the United States.

In violation of Title 8 United States Code, Section(s) 1326(a).

I further state that I am a(n) Special Agent, Department of Homeland Security, ICE and that this complaint is based on the following facts:
Official Title

See attached Affidavit

Continued on the attached sheet and made a part hereof: Yes X

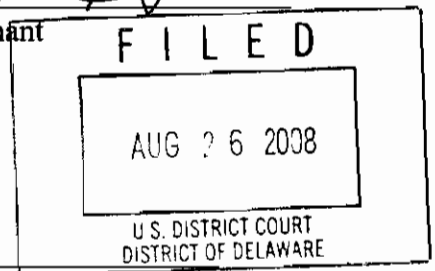


Signature of Complainant
William O. Horn
Special Agent, ICE

Sworn to before me and subscribed in my presence,

August 26, 2008
Date

at Wilmington, DE
City and State



Honorable Mary Pat Thyng
United States Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT

I, William O. Horn, being duly sworn, depose and say:

1. I am a Special Agent with the United States Department of Homeland Security, Bureau of Immigration & Customs Enforcement (ICE), Wilmington, Delaware. I have been employed as a Special Agent since October 1, 1997, when I was employed by the Immigration and Naturalization Service (INS). The INS was transferred to the U.S. Department of Homeland Security as the Bureau of Immigration & Customs Enforcement in March 2003.

2. This investigation is based on information provided by State of Delaware government agencies, INS/ICE records, and my own observations and interviews.

3. On or about August 19, 2008, ICE Agents were notified by the Sussex Correctional Institution, in Georgetown, Delaware, in the District of Delaware, that Mario Francisco MARTÍNEZ-Hernández was in custody on multiple driving charges. A review of ICE indices revealed that Mario Francisco MARTÍNEZ-Hernández, a citizen of Guatemala and an admitted member of the 18th Street gang, had been removed from the United States to Guatemala on March 26, 2007.

4. On August 26, 2008, your affiant advised Mario Francisco MARTÍNEZ-Hernández of his rights and interviewed him at the CBP office in New Castle, DE, where he advised your affiant that his true and correct name is Mario Francisco MARTÍNEZ-Hernández and that he is a citizen of Guatemala. When asked, Mario Francisco MARTÍNEZ-Hernández stated that he had been removed from the United States about a year ago, and that he had reentered the United States illegally approximately three months ago, on or about May 12, 2008, without being inspected by an Immigration Officer. He stated that he had crossed the border away from the Port of Entry where the Immigration Officers are located. Your affiant asked Mario Francisco MARTÍNEZ-Hernández about his gang membership, and he denied being a member of the 18th Street Gang in Guatemala, despite several tattoos indicating that he, in fact, was a member.

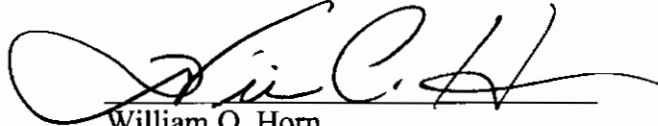
5. On August 26, 2008, your affiant took Mario Francisco MARTÍNEZ-Hernández's fingerprints on ICE's Integrated Automated Fingerprint Identification System (IAFIS). The fingerprints were identified as those of Mario Francisco MARTÍNEZ-Hernández, Alien No. A97 698 472 and FBI No. 874288LC4, who had been removed from the United States on March 26, 2007.

6. Your affiant has reviewed the Alien File of Mario Francisco MARTÍNEZ-Hernández, as well as computerized databases of ICE and Citizenship and Immigration Services (CIS), another component of the Department of Homeland Security that was previously part of the INS, and found no evidence of any lawful status or application therefor in the name of Mario Francisco MARTÍNEZ-Hernández. Nor did your affiant find any evidence that Mario Francisco MARTÍNEZ-Hernández had applied for Advance Permission to Apply for Admission to the United States after removal from the United States. In addition, Mario Francisco MARTÍNEZ-Hernández was asked whether he had filed any such application, and he stated that he had not.

WHEREFORE, your affiant avers there is probable cause to believe that Mario Francisco MARTÍNEZ-Hernández, a citizen and national of Guatemala, was removed from the United States

to Guatemala on March 26, 2007, and subsequently reentered the United States illegally, without being inspected by an Immigration Officer, and that, prior to his reembarkation at a place outside the United States, neither the United States Attorney General nor the Undersecretary for Border and Transportation Security, Department of Homeland Security, had expressly consented to such alien's reapplying for admission, in violation of Title 8, United States Code, 1326.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William O. Horn", written over a horizontal line.

William O. Horn
Special Agent
U.S. Immigration & Customs Enforcement

Sworn and subscribed before me

This 2 day of August 2008

A handwritten signature in black ink, appearing to read "Mary Pat Thynge", written over a horizontal line.

Honorable Mary Pat Thynge
United States Magistrate Judge